

46 Am. Jur. 2d Judges § 151

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

b. Prior Participation in or Connection with Case as Judge as Grounds for Disqualification

§ 151. Disqualification of judge to sit on retrial of case reversed by higher court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  [47\(1\)](#), [47\(2\)](#), [48](#)

A.L.R. Library

[Disqualification of original trial judge to sit on retrial after reversal or mistrial](#), 60 A.L.R.3d 176

Forms

Forms relating to disqualification of judge due to bias or prejudice, generally, see Am. Jur. Pleading and Practice Forms, Judges [[Westlaw®\(r\) Search Query](#)]

In the absence of a constitutional or statutory provision to the contrary, a judge who presided at the trial of a case which has been reversed on appeal and remanded for a new trial is not disqualified to retry the case.¹ It is the duty and function of a trial court to reach an opinion on a question of law based upon the facts of the problem presented, and an exercise of this duty may not be used as a basis for disqualification.² However, statutes in some jurisdictions prohibit a judge who presides over a case

in which a new trial is granted from presiding over the retrial.³ In addition, a case may be assigned to another trial judge on remand in the best interests of the integrity and fairness of the judicial process,⁴ or where the presiding judge at the first trial had already expressed an opinion that the criminal defendant was guilty,⁵ had been overzealous in questioning witnesses,⁶ had previously refused to honor a plea bargain,⁷ or had stated that he or she would impose the same sentence even if reversed.⁸

Observation:

An appellate court may presume that a trial judge has good cause for voluntarily recusing him- or herself from a second trial, and the judge's reasons need not be stated on the record.⁹

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Footnotes

- 1 Jackson v. State, 599 So. 2d 103 (Fla. 1992); Booth v. State, 327 Md. 142, 608 A.2d 162 (1992); Kiker v. State, 130 So. 3d 554 (Miss. Ct. App. 2013); Klein v. Klein, 153 Vt. 551, 572 A.2d 900 (1990); State v. Belgarde, 119 Wash. 2d 711, 837 P.2d 599 (1992); State v. Whitt, 183 W. Va. 286, 395 S.E.2d 530 (1990); Story v. State, 788 P.2d 617 (Wyo. 1990).
- 2 Robertson v. Humphries, 1985 OK 46, 708 P.2d 1058 (Okla. 1985).
- 3 Board of Educ. of Town of East Haven v. East Haven Educ. Ass'n, 66 Conn. App. 202, 784 A.2d 958 (2001).
- 4 Blomquist v. Clague, 290 N.W.2d 235 (N.D. 1980).
- 5 Melvin v. State, 606 A.2d 69 (Del. 1992).
- 6 People v. Rodriguez, 159 A.D.2d 736, 553 N.Y.S.2d 446 (2d Dep't 1990).
- 7 Com. v. Felder, 246 Pa. Super. 324, 370 A.2d 1214 (1976).
- 8 Columbus v. Hayes, 68 Ohio App. 3d 184, 587 N.E.2d 939 (10th Dist. Franklin County 1990).
- 9 Gerety v. Demers, 1978-NMSC-097, 92 N.M. 396, 589 P.2d 180 (1978).

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